



Board of Health

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ARTICLE 1 REGULATION AFFECTING SMOKING AND THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS IN NEEDHAM

SECTION 1.1 AUTHORITY

This regulation is promulgated under the authority granted to the Needham Board of Health under Massachusetts General Laws Chapter 111, Section 31 "boards of health may make reasonable health regulations."

SECTION 1.2 RATIONALE/PURPOSE

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas environmental tobacco smoke [hereinafter ETS], which includes both exhaled smoke and the side stream smoke from burning tobacco products, causes the death of 53,000 Americans each year (McGinnis JM, Forge W, "Actual Causes of Death in the United States", JAMA 1993 270:2207-2212); and whereas the Ninth Report on Carcinogens of the Public Health Service's National Toxicology Program classified secondhand smoke as a known human carcinogen (U.S. DHHS, 2000) and the International Agency for Research on Cancer (IARC) of the World Health Organization also classified secondhand smoke as a known human carcinogen (IARC-WHO, 2002); now, therefore, the Board of Health of the town of Needham recognizes the right of those who wish to breathe smokefree air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in public places and workplaces.

Whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem.

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth (CDC, 2009); and the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009 (21U.S.C. § 387g), prohibited candy-and fruit-flavored cigarettes, largely because these flavored products were marketed to youth and young adults (New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies, Carpenter, Wayne, & Pauly, 2005) and younger smokers were more likely to have tried these products than older smokers (U.S. DHHS, 2012), neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices; and the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long term addiction (FDA, 2011). and according to the CDC’s youth risk behavior surveillance system (2010), the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.9% in 2009; and in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history (Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009, Commonwealth of Massachusetts); research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4% (Effects of Public Policy on Adolescents’ Cigar Use: Evidence from the National Youth Tobacco Survey, Ringel, Wasserman & Andreyeva, 2005); and nicotine levels in cigars are generally much higher than nicotine levels in cigarettes (Cigar Smoking and Cancer, National Institute of Health, NCI, 2010); and in Massachusetts, youth use cigars and smokeless tobacco (12.3%) is higher than the rate of current cigarette use (10.7%) for 2013 and has remained elevated since 2009 (Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009, Commonwealth of Massachusetts).

Whereas, tobacco is currently sold in health care facilities such as pharmacies and drug stores and the sale of tobacco products is incompatible with the mission of health care facilities because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication.

Whereas, educational institutions in the Town of Needham may also sell tobacco products to the younger population, which is particularly at risk for becoming smokers and the sale of tobacco products is also incompatible with the mission of educational institutions which educate the younger population about social, environmental and health risks and harms.

Whereas, there are certain tobacco products such as blunts that are frequently marketed and sold to the youth and are also known to be used as drug paraphernalia.

Whereas, the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste” (310 CMR 30.136).

Now, therefore it is the intention of the town of Needham Board of Health to curtail the access to tobacco products by Needham youth.

SECTION 1.3 DEFINITIONS (As used in this regulation):

Adjacent: Contiguous or adjoining.

Blunt Wrap: A product comprised wholly or in part of tobacco that is manufactured as a wrap or a hollow tube designed to be filled by the consumer with loose tobacco or other fillers and then combusted

and inhaled.

Board: Town of Needham Board of Health and its designated agents. Those agents include the Director of Public Health and his/her staff, as well as other municipal officials designated by the Director or the Board Including, but not limited to, law enforcement officers, fire officials, code enforcement officials, and other public and private consultants.

Business agent: an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do no contribute to the distinguishable taste or aroma of the product.

Component part: An element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical, or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Coupon: Any card, paper, note, form, statement, ticket, or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

Distinguishable: Perceivable by either the sense of smell or taste.

E-Cigarette: Any electronic device composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: any individual who performs services for an employer in return for wages or profit and any person who volunteers his or her services for an employer.

Employer: any individual, firm, partnership, association, corporation, trust, or other business entity or organization of any kind, including the Town of Needham or any agency thereof, which utilizes the services of one (1) or more individual employees.

Educational Institution: any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Enclosed area: a space bounded by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms and halls.

Entity: any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Facility: any office or institution providing care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including, but not limited to, rehabilitation hospitals or other clinics, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist, pharmacies, drug stores, any entity subject to licensing by the Massachusetts Department of Public Health under M.G.L. c. 112 and all specialists within these professions.

Indoor Sports Arena: any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley and other similar recreational facility where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.

Listed or non-discounted price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Minor: an individual who is under the age of twenty-one (21).

Municipal Building: any building or enclosed facility owned, operated, rented, leased or occupied by the Town of Needham, including school buildings and school grounds.

Municipal Vehicle: any vehicle owned, rented, leased or operated by the Town of Needham, including without limitation, cars, trucks and buses.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely

personal consumption are not Non-Residential RYO machines.

Non-smoking Area: any area that is designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees, visitors or others is prohibited and where smoke and smoking by-products are not permitted.

Permit Holder: any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a Tobacco Sales Permit or any person who is required to apply for a Tobacco Sales Permit pursuant to these regulations, or his or her business agent.

Person: an individual, firm, partnership, association, corporation, trust, company, other business entity, or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, restaurant, or retail store, or the business agents or designees of any of the foregoing.

Private Club: any not-for-profit establishment created and organized pursuant to M.G.L. Chapter 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather is distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a “club license” or a “war veterans club license” as defined in M.G.L. Ch. 138, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

Public Place: any building or facility owned, leased, rented, operated or occupied by the Town of Needham, including school buildings and grounds; any area open to the general public, including but not limited to restaurants, bar areas of restaurants, bars, auditoriums, licensed child care locations and other child care facilities, schools and school property, public and private educational facilities, clinics, hospitals, health care facilities, nursing homes, long-term care facilities, public libraries, municipal buildings, museums, theaters, retail stores, laundromats, hair cutting establishments, salons, massage and body art establishments, retail food establishment, fast food or take-out food facilities, indoor sports arenas, public transit facilities, enclosed shopping malls, common areas in privately owned buildings, common areas in public access buildings, any clubs, rooms or halls when open to the public or when used for public meetings, all areas available to and customarily used by the public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys’ offices and other offices, banks, hotels and motels, stairwells, hallways, entranceways, waiting areas, lobbies, public rest rooms, and elevators accessible to the public.

Public Transportation: buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the town including indoor platforms by which such means of transportation may be accessed.

Restaurant: any coffee shop, cafeteria, workplace cafeteria, sandwich stand, private and public school cafeteria, and other eating establishment that gives or offers food for sale to the public, guests, or employees for on-premises consumption. This includes all food service establishments licensed by the Board of Health, including catering facilities, but does not include private clubs or fraternal organizations when either are closed to the public.

Retail Food Establishment: any establishment commonly known as a supermarket, grocery store, bakery, or convenience store in which the primary activity is the sale of food items to the public for off-premises consumption. This includes any “take-out” food service establishment and all other food service establishments not included in the definition of a restaurant.

Retail Store: any retail service establishment whose primary purpose is to sell or offer for sale to consumers any goods, wares, merchandise, articles, other things or services. "Retail store" shall include retail food stores but shall not include restaurants as defined herein.

Retail Tobacco Store: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Needham Board of Health.

Schools: Public or private elementary or secondary schools.

Self Service Display: any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking: the inhaling, exhaling, burning, holding or carrying of any lighted cigar, cigarette, pipe, or other lighted tobacco product in any form or other tobacco products or non-tobacco products designed to be combusted and inhaled.

Smoking bar: An establishment that is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed or sold or prescribed solely for the approved purpose.

Tobacco Vending Machine: any automated or mechanical self-service device or machine which, upon insertion of money, tokens, swipe cards, slugs or any other form of payment, dispenses cigarettes or any other tobacco product.

Town: the Town of Needham, Massachusetts.

Workplace: Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer (including the personal residence of the employer during those hours when used as a place of employment). It also includes motor vehicles, employee lounges, restrooms, conference rooms, hallways, stairways and entrance ways, as well as exterior, unenclosed spaces at stairs,

ramps, landings, patios, porches, decks, adjacent yards, loading docks and other areas within twenty (20) feet of the entrance doors or other areas where smoke would migrate into the enclosed area of a structure.

SECTION 1.4 PROHIBITION ON SMOKING IN PUBLIC PLACES AND WORKPLACES

No person shall smoke or use an e-cigarette nor shall any person having control of the premises upon which smoking is prohibited by this regulation or by M.G.L. c. 270, §22, or the business agent or designee of such person, permit a person to smoke or use an e-cigarette in any of the following places as defined herein: restaurants and all outdoor areas of restaurants, bars, taverns, and any other outdoor place where food and/or beverages, and/or non-alcoholic beverages are sold, served, or otherwise consumed or carried, health care facilities, municipal buildings, municipal vehicles, public places, public transportation, retail stores, town-owned parks and playgrounds, town-owned athletic fields, town-owned property, conservation land, nursing homes, hotels, motels, inns, bed and breakfast, lodging homes, any establishment that is required to possess a valid Tobacco Sales Permit from the Needham Board of Health (including, but not limited to, smoke shops, tobacconists, retail tobacco stores) and workplaces except as otherwise provided in Section 1.4.2 of this regulation. It shall be the responsibility of the employer to provide a smoke-free environment for all employees working in an enclosed workplace as well as those workplaces listed. Additionally, no person shall smoke in any place in which a sign conforming to the requirements of Section 1.4.1 of this regulation is posted. No person shall remove a sign posted under the authority Section 1.4.1 of this regulation.

1.4.1 Posting Notice of Prohibitions: Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises "No Smoking" signs provided by the Massachusetts Department of Public Health and available from the Needham Board of Health or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) and comparable in size to the sign provided by the Massachusetts Department of Public Health and available from the Needham Board of Health.

1.4.2 Exclusions: Notwithstanding any other provision of these regulations, smoking may be permitted in the following places and/or under the following circumstances consistent with all applicable state laws:

(a) Private residences except those portions used as a public place, food service establishment, child care, adult care, or health care office during the hours when operating as such;

(b) Hotel, motel, inn and bed and breakfast rooms rented to guests are smoke free (100%) at all times. A room so designated shall have signs posted indicating that no smoking is allowed.

(c) Private clubs if all employees are members. When a private club is open to the general public, that portion of said establishment open to the general public must be smokefree, separately enclosed and shall have self-closing doors. Premises occupied by a membership association, if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by an association during the time of the permitted activity if the premises are not located in a public building. Smoking may be permitted in a distinct part of the premises of a membership association, provided that this part (a) is physically separated from any area open to the public or occupied by a non-member who is not a guest. The separation shall be sufficient to prevent any migration of smoke into the public areas. Any doors separating the areas shall be self-closing; (b) is occupied solely by those persons specified in 105 CMR 661.100(b). The membership association shall adopt and effectively implement a policy that ensures only such persons are permitted to enter the part of the premises where smoking is permitted; and (c) there are

no signs inviting or encouraging the public or non-members who are not guests to enter. No smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:

- a. open to the public. A membership association shall be regarded as open to the public when it has signs or advertising inviting or encouraging non-members to the premises or takes other action that may reasonably be regarded as inviting or allowing non-members to enter the premises.; or
- b. occupied by a non-member who is not an invited guest of a member or an employee of the association. A non-member shall be regarded as a guest if entering the premises (a) accompanied by a member, provided the member remains on the premises while the guest is present, and (b) signing a guest register that clearly specifies the name and address of the guest and the inviting member;
- c. rented from the association for a fee or other agreement that compensates the association for the use of such space; OR
- d. occupied by a contract employee, temporary employee or independent contractor.
 - (i) Smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association. A person shall not be regarded as a member if entering the premises under terms of a membership that differ in duration, cost or privileges from the terms of a full membership in the association. A person who is a contract employee, temporary employee, or independent contractor shall be considered an employee of a membership association under this subsection,. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system, and is visiting the affiliated association, shall be an invited guest for the purpose of this association.

Nothing shall prohibit an establishment from being completely smokefree.

SECTION 1.5 SMOKING BARS

Smoking bars are prohibited in the Town of Needham.

SECTION 1.6 RETAIL SALE OF TOBACCO PRODUCTS

1.6.1 As of April 1, 2005, no person shall sell tobacco products or permit tobacco products to be sold to any person under the age of twenty-one (21) or not being the recipient's parent or legal guardian, give tobacco products to any person under the age of twenty-one (21).

1.6.2 In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Needham Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. +

1.6.3 In addition to the notice required under Section 1.6.2, notices provided by the Needham Health Department shall also be posted by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail:

(a) As of April 1, 2005, such notice shall state that the sale of tobacco products to persons under age 21 is illegal;

(b) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage that discloses current referral information about smoking cessation;

(c) The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating, "The use of e-cigarettes at indoor establishments may be prohibited by local law." The notices shall be no smaller than 8.5" by 11" and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at, or approaching the cash register. These notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 or greater than 9 feet from the floor.

1.6.4 Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is twenty-one (21) years or older. Verification is required for any person under the age of 27.

1.6.5 All retail sales of tobacco must be face-to-face between the seller and the buyer.

1.6.6 No person or entity selling tobacco products shall allow anyone under twenty one (21) years of age to sell cigarettes, other tobacco products.

1.6.7 No health care facility, as per our regulations, located in the Town of Needham shall sell or cause to be sold tobacco products. Additionally, no retail establishment that operates or has a health care facility within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

1.6.8 No educational institution located in the Town of Needham shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

1.6.9 No person or entity shall sell or distribute blunt wraps in the Town of Needham.

1.6.10 No person shall sell or distribute any flavored tobacco product, except in retail tobacco stores.

SECTION 1.7 TOBACCO SALES PERMIT

1.7.1 No person shall sell or otherwise distribute tobacco at retail within Needham without first obtaining a Tobacco Sales Permit issued annually by the Needham Board of Health.

1.7.2 As part of the Tobacco Sales Permit application process, the applicant will be provided with the Needham Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding both state laws regarding the sale of tobacco and this regulation.

1.7.3 As a condition for obtaining and/or renewing a Tobacco Sales Permit, the Needham Board of Health may require tobacco retailers and any employee involved in the act of sale of tobacco products to participate in training programs provided by or approved by the Board regarding compliance with the laws and regulations prohibiting the sale of tobacco products to minors and to individuals under the age of 21.

1.7.4 Each applicant selling tobacco products is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco Sales Permit can be issued.

1.7.5 The fee for a Tobacco Sales Permit shall be determined by the Needham Board of Health annually. All such permits shall be renewed annually by December 31st.

1.7.6 A separate permit is required for each retail establishment selling tobacco.

1.7.7 Each Tobacco Sales Permit shall be displayed at the retail establishment in a conspicuous place.

1.7.8 No Tobacco Sales Permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.

1.7.9 A Tobacco Sales Permit is non-transferable, except a new permit will be issued to a retailer who changes location.

1.7.10 Issuance of a Tobacco Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

1.7.11 A Tobacco Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

1.7.12 Maximum Number of Tobacco Sales Permits: At any given time, there shall be no more than twelve (12) Tobacco Sales Permits issued in Needham. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew their permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-serve" basis as issued permits are either not renewed or are returned to the Board of Health.

SECTION 1.8 FREE DISTRIBUTION AND COUPON REDEMPTION

1.8.1 No person shall distribute, or cause to be distributed, any free samples of tobacco products. No means, instruments or devices that allow for the redemption of all tobacco products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

1.8.2 No person shall accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or

1.8.3 Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., “buy-two-get-one-free”) or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

1.8.4 Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

SECTION 1.9 CIGARETTE PACKAGING AND CIGAR SALES

1.9.1 The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

1.9.2 No Person shall sell or distribute or cause to be sold or distributed a single cigar.

1.9.3 No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.

1.9.4 This Section shall not apply to (a) the sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more; (b) a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the Town of Needham.

1.9.5 The Needham Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

1.9.6 A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Needham Board of Health with a written plan for disposal of said non-pharmaceutical hazardous waste, including disposal plans for any breakage, spillage or expiration of the product.

1.9.7 No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed nicotine in a liquid or gel substance in Needham unless the liquid or gel products are contained in a child-resistant package that, at a minimum, meets the standards for special packaging as set forth in 15 U.S.C. 1471-1476; 16 CFR §1700 et seq.

1.9.8 No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed nicotine in a liquid or gel substance in Needham unless the liquid or gel product lists the ingredients and nicotine content, measured in milligrams per milliliter, of that liquid or gel product.

SECTION 1.10 SELF SERVICE DISPLAYS

All self-service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

SECTION 1.11 TOBACCO VENDING MACHINES AND ROLL-YOUR-OWN MACHINES

1.11.1 All tobacco vending machines are prohibited.

1.11.2 All Non-Residential Roll-Your-Own machines are prohibited.

SECTION 1.12 VIOLATIONS

1.12.1 It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco products. Any permit holder, proprietor(s) or other persons(s) in charge of a place covered by this regulation or his or her business agent or designee who fails to comply with this regulation shall be subject to the following:

(a) In the case of a first violation, a fine of one hundred dollars (\$100.00), and the Tobacco Sales Permit shall be suspended for seven (7) consecutive business days.

(b) In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200) and the Tobacco Sales Permit shall be suspended for 12 months.

(c) In the case of three or more violations within a 24-month period, the Board of Health shall hold a hearing and may permanently revoke a Tobacco Sales Permit..

A permit holder whose permit has been suspended for 12 months may not apply for a new permit prior to the expiration of the 12-month suspension period.

1.12.2 Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Sales Permit for thirty (30) consecutive business days.

1.12.3 In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.

1.12.4 The Needham Board of Health shall provide notice of the intent to suspend, revoke, or deny the issuance or renewal of a Tobacco Sales Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. The Needham Board of Health after a hearing, may suspend, revoke, or deny the issuance or renewal of the Tobacco Sales Permit. All tobacco products shall be removed from the retail establishment upon suspension of the Tobacco Sales Permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

1.12.5 Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

SECTION 1.13 NON-CRIMINAL DISPOSITION

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D and Town of Needham General By Laws or by filing a criminal complaint at the appropriate venue.
Each day any violation exists shall be deemed to be a separate offense.

SECTION 1.14 ENFORCEMENT

Enforcement of this regulation shall be by the Needham Board of Health, Health Director, Environmental Health Agent, Public Health Nurse, other Health Agent, or the Needham Police.

Any person who desires to register a complaint pursuant to the regulation may do so by contacting the Board of Health of Needham or its designated agent(s) and the Board shall investigate.

SECTION 1.15 OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

SECTION 1.16 SEVERABILITY

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

SECTION 1.17 EFFECTIVE DATE

This regulation shall take effect upon publication of a summary of the regulation in a newspaper published in the Town of Needham. As required by M.G.L., Chapter 111, Section 31, an attested copy has been filed with DEP on 9/13/91. Public meetings regarding this regulation were conducted on May 1, May 14, June 18, and July 23, 1991. This regulation was voted by a majority of this Board on July 23, 1991.

1.4.1 Amended: 9/19/95, Publication Date: 10/12/95

1.6 Amended: 9/16/97, 7/13/01, Publication Date: 12/24/97, 8/2/01

1.4 Amended: 11/15/02, Publication Date: 12/21/02

1.2; 1.6-1.7 Amended: 2/26/03, Publication Date: 3/06/03

1.3, 1.4.2, 1.6.3, 1.6.4 Amended 2/15/06 Publication Date: 2/23/06

1.7.3 Amended: 5/16/06, 7/14/09, 7/11/13, 9/12/13, Publication Date: 6/8/06, 10/1/09, 7/26/13

All sections extensively revised and Amended: 10/9/15, with notice provided to DEP, Town Clerk, and advertised in town newspapers.